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4/26/05 JMB

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April 26, 2005

**VIA HAND DELIVERY**  
**AND ELECTRONIC MAIL**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Application of Carolina Water Service, Inc. for adjustment of rates  
and charges for the provision of water and sewer service and  
modification of rate schedules; Docket No. 2004-357-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and five (5) copies of the Reply to DHEC's  
Response in the above-referenced matter.

By copy of this letter, I am serving counsel for all parties of record with a copy of same and  
enclose a certificate of service to that effect. I would appreciate your acknowledging receipt of this  
letter and the attached document by date-stamping the extra copy that is enclosed and returning it  
via the courier delivering same.

(Continued . . . .)

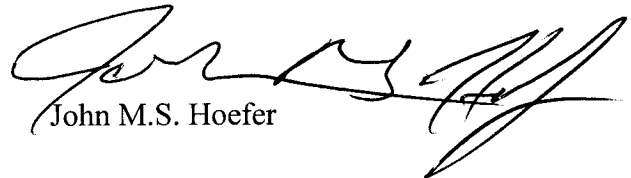
The Honorable Charles L.A. Terreni  
April 26, 2005  
Page 2

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If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**



John M.S. Hoefer

JMSH/twb

Enclosures

cc: C. Lessie Hammonds, Esquire  
Florence P. Belser, Esquire  
Jessica J.O. King, Esquire  
Carlisle Roberts, Jr., Esquire  
Scott Elliott, Esquire  
Charles Cook, Esquire  
(All via U.S. Mail, email and fax)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2004-357-W/S**

RECEIVED  
2005 APR 26 AM 11:38  
SC PUBLIC SERVICE  
COMMISSION

IN RE: )  
)  
Application of Carolina Water Service, )  
Inc. for adjustment of rates and charges )  
and modification of certain terms and )  
conditions for the provision of water and )  
sewer service. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Reply to DHEC's Response** via facsimile, e-mail and by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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Tracy W. Barnes

Columbia, South Carolina  
This 26<sup>th</sup> day of April, 2005.

BEFORE

THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2004-357-W/S

RECEIVED  
2005 APR 26 AM 11:38  
SC PUBLIC SERVICE  
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IN RE:

Application of Carolina Water Service,  
Inc. for adjustment of rates and charges  
and modification of certain terms and  
conditions for the provision of water and  
sewer service.

APPLICANT'S REPLY TO DHEC'S  
RESPONSE TO MOTION FOR ORDER  
PROHIBITING INTRODUCTION OR  
ADMISSION OF TESTIMONY

Applicant, Carolina Water Service, Inc. ("Applicant" or "CWS"), submits the within reply to the April 26, 2005 Response of the South Carolina Department of Health and Environmental Control ("DHEC") to Applicant's motion for an order prohibiting the introduction of the direct testimony of Jeffrey P. deBessonnet, submitted on behalf of, into evidence in the above-captioned proceeding. In that regard the, Applicant would respectfully show as follows:

1. By its response, DHEC now admits that it did no timely pre-file or serve the testimony of its proposed witness. Rather, DHEC admits that the testimony was not postmarked or delivered to the Commission or parties until April 21, 2005. [DHEC Response at ¶¶ 3-4.]
2. DHEC does not dispute that the Commission, in Docket No. 2001-504-E, Order No. 2002-133, placed DHEC on notice that it "will not tolerate DHEC disobeying the Commission's Rules of Practice and Procedure and applicable State law.
3. Although DHEC indicates that its mailroom staff is to blame, it was incumbent upon DHEC, particularly in light of the Commissions' admonition in Order No. 2002-133, to educate its entire staff regarding the Commission's administrative procedures and requirements. The statement of DHEC employee Gehr attached to DHEC's response makes it clear that DHEC has not done so.

4. Contrary to DHEC's assertion otherwise, the Applicant has been prejudiced. Counsel for the Applicant diligently examined the Commission's DMS on Thursday, April 21, 2005 to ascertain which, if any parties, other than ORS had pre-filed testimony. The Commission may take notice that DHEC's testimony is not reflected on the DMS as having been filed on or before April 21, 2005. Moreover, Counsel for Applicant only learned of the tardy DHEC filing by way of a telephone call received from his administrative assistant on the late afternoon of April 22, 2005 while he was out of town and stranded at the Greenwood, South Carolina airport. In addition to preparing rebuttal testimony for the other witnesses which must be served and filed tomorrow, preparing for the upcoming night hearing scheduled for today's date, and preparing another motion addressed to the instant case, Counsel's attention will have to be diverted to prepare rebuttal testimony on a matter that the Commission, in Order 2005-113 has already determined not to be at issue in this case. The Applicant is absolutely prejudiced by the conduct of DHEC in this regard and is entitled to relief therefrom.

5. DHEC's response presents a very clear question to the Commission: **does the Commission mean what it says in its own orders?** In Order No. 2002-133 in Docket No. 2001-504-E the Commission held that it would not countenance further episodes of DHEC failing to adhere to the Commission's procedural rules and orders pertaining to pre-filing of testimony. Thus, in Order No. 2002-167 in Docket No. 2001-504-E, the Commission precluded DHEC from presenting the pre-filed testimony of a DHEC witness because DHEC had failed to timely serve the applicant in that case with a copy of the testimony. The instant matter is even more problematic since **DHEC admits that it has neither filed nor served** its testimony in this case **in a timely**

**manner.** And, in Order No. 2005-113 in the instant docket, the Commission has ruled that the subject of the DHEC witness's testimony is beyond the scope of this proceeding. Yet, DHEC continues to challenge that ruling by insisting that it has the right to provide testimony on the Applicant's pass-through because "[t]he Applicant has proposed to modify the language in the Tariff [sic] addressing interconnection rates." [DHEC Response at ¶7.] In addition to being patently incorrect, this assertion simply contradicts the Commission's ruling in Order No. 2005-113 that the Applicant was not seeking a modification to the portion of its rate schedule providing for a pass-through of bulk charges. *Id.* at 3 ("[c]ertainly, we agree that, in this case, the scope of the proceeding should not be expanded beyond that which was raised in the Company's application.") The Commission's orders have the force and effect of law. *S.C. Cable Television Association v. Southern Bell*, 308 S.C. 216, 417 S.E.2d 586 (1992). DHEC should not be permitted to disobey the law.

6. DHEC's assertion that it needs to address in testimony the Applicant's rate schedule in order for the Commission to "adequately and accurately determine the appropriateness of the [Company's] prefiled testimony is without merit since the Applicant's prefiled testimony does not pertain to the propriety of pass-through rates or interconnection agreements. The Commission may also take notice of the fact that it has conducted numerous proceedings on interconnection agreements in which DHEC has either been a party or has testified. If and when the Company, or any other public utility submits an interconnection agreement for approval by the Commission, DHEC will have an opportunity to address the issue it stubbornly seeks to impose upon the Commission and the other parties.

7. Finally, DHEC is not entitled to make a proffer of the testimony of its witness at the hearing under 26 S.C. Code Ann. Regs. R. 103-873.B as it asserts. [DHEC Response at 4, n.1.] Only testimony which has been pre-filed can be offered into the record of evidence in the instant case. If DHEC's testimony is excluded because it has not properly been pre-filed, there is nothing for it to proffer under Rule 103-873.B. Moreover, none of the parties will have had an opportunity to rebut testimony that has been excluded because it was not properly pre-filed. And, if DHEC wished to challenge the Commission's ruling in Order No. 2005-113 so as to be permitted to pre-file its testimony, it could have sought immediate relief from the circuit court under S.C. Code Ann. §1-23-380(A)(2005). Having failed to do so, the law of the case to this point is that the subject matter of DHEC's testimony is not proper for consideration in this case. DHEC should be required to exhaust its remedies on that point before it clutters the record in this case with testimony beyond the scope of the proceeding. An offer of proof would therefore be inappropriate since it would seek to prove a matter not in dispute.<sup>1</sup>

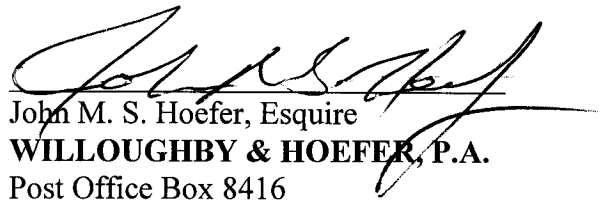
WHEREFORE, having fully set forth its reply to DHEC's response to the Applicant's motion, Applicant requests that its motion be granted and the relief sought by DHEC in its response denied. Alternatively, the Applicant requests that it be permitted an extension until Friday, April 29, 2005 within which to pre-file rebuttal testimony responsive to any DHEC testimony.<sup>2</sup>

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<sup>1</sup>The Applicant suspects that DHEC's request to make an offer of proof is simply designed to give it the ability to have an appellate court consider its testimony, without the benefit of opposing testimony or Commission analysis, to bolster an appeal of Order No. 2005-113. The Applicant submits that this would be inherently unfair to the Commission and all parties.

<sup>2</sup>Although Applicant initially alternatively sought an extension until April 28, the distraction of having to further address DHEC's efforts to have untimely pre-filed testimony considered on an issue beyond the scope of the instant case has further prejudiced the Applicant in its ability to prepare rebuttal testimony for the timely prefiled and served testimony of the other parties.





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803-252-3300  
Attorneys for Applicant

Columbia, South Carolina  
This 26<sup>th</sup> day of April, 2005